



National Aeronautics and
Space Administration

Principal Center for Regulatory Risk Analysis and Communication

REGULATORY ALERT

Rulemaking on the Definition of Solid Waste

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Title: <i>Rulemaking on the Definition of Solid Waste</i>	Date [Citation]: 30 June 2011 [Pre-publication]
Rulemaking Type: Proposed Rule	Regulatory Agency: U.S. Environmental Protection Agency

Summary:

On 30 June 2011, EPA posted a [pre-publication version](#) of a proposed rule that would revise and clarify the Resource Conservation and Recovery Act (RCRA) "definition of solid waste" (DSW). The proposed rule specifically would modify the DSW for certain types of hazardous secondary materials that currently are conditionally excluded from the DSW. Hazardous secondary materials are those that would be classified as hazardous waste if discarded and not recycled.

RCRA was modified in 2008 to exclude certain types of hazardous secondary materials from the DSW. The exemptions originally were intended to encourage the recovery, reuse, and recycling of valuable resources.

2008 Final Rule DSW for hazardous secondary materials	2011 Proposed Rule DSW for hazardous secondary materials
Excludes from the DSW: materials generated and reclaimed by the same generator	Retains the exclusion for hazardous secondary materials reclaimed under the control of the generator, but with certain revisions such as adding a regulatory definition of "contained" to 40 CFR 260.10 and adding recordkeeping requirements.
Excludes from the DSW: materials generated by a generator and reclaimed at a different facility within the same company from the DSW	
Excludes from the DSW: materials generated by the generator and reclaimed through a tolling agreement	
Excludes from the DSW: materials generated by the generator and transferred to another company for reclamation under specific conditions	Replaces the transfer-based exclusion with an alternate hazardous waste standard with streamlined requirements for the generator. A new hazardous recyclable materials standard would require hazardous recyclable materials to be managed according to the current RCRA Subtitle C requirements, including manifesting and hazardous waste permits for storage.
Excludes from the DSW: materials deemed non-wastes by EPA through a case-by-case petition process	Includes revisions such as: <ul style="list-style-type: none">• facilities must re-apply for a variance under certain conditions• facilities must re-notify with updated information every 2 years• criteria for the partial reclamation variance must be reviewed and evaluated• criteria for the non-waste determination in 40 CFR 260.34 must be revised• petitioners must demonstrate why the existing solid waste exclusions would not apply to their hazardous secondary materials

EPA is also proposing revisions to the definition of “legitimacy” in 40 CFR 260.43 and applying the codified definition to all recycling activities.

EPA is proposing these revisions in response to stakeholder concerns that hazardous secondary materials can harm human health and the environment if disposed in lieu of legitimate recycling and reclamation. EPA will accept comments on the proposed rule for 60 days after publication in the Federal Register.

Potential Impacts to NASA:

National Aeronautics and Space Administration (NASA) Centers potentially affected by this rule include those that generate or recycle hazardous secondary materials, including the following:

- Byproducts
- Residues
- Unreacted feedstocks

Some examples of these types of materials include spent abrasive blast media or solvents. With the finalization of this rule, some of these materials would still remain exempt but could fall under the revised DSW and therefore be regulated under Subpart C of RCRA and the additional regulatory requirements proposed.

Conditionally exempt small-quantity generators, facilities that generate less than 100 kilograms (kg) of hazardous waste in a calendar month, are not affected by the final rule, because their wastes are already excluded from regulation.

Additional Information: <http://www.epa.gov/waste/hazard/dsw/rulemaking.htm>
